CF0000061978

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE, AT JABALPUR.

Cri. Appeal No. 73 of 1999.

APPELLANT:- Sukul Singh son of Chamroo Ram Kanwar, aged about 43 years, R/o Batani, P.S. Kartala, Th. Korba, Distt. Korba, M?P.

V E R S U S

RESPONDENT:- The State of Madhya Pradesh.

525
Filed on 7-1-99.
by Shri K.U. Khare

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE.

(31)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Criminal Appeal No. 73 of 1999

Sukul Singh

Vs.

The State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

15.12.2006

HON'BLE MR. JUSTICE L.C. BHADOO

Sd/-
L.C.BHADOO
Judge

19-12-2006

POST FOR JUDGMENT ON 20 TH DECEMBER, 2006

Sd/-
DHIRENDRA MISHRA
Judge

19.12.2006

(52)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH*

CORAM: HON'BLE MR. L.C. BHADOO
& HON'BLE MR. DHIRENDRA MISHRA, JJ

Criminal Appeal No. 73 of 1999

Sukul Singh

Vs.

The State of Madhya Pradesh (now Chhattisgarh)

Present:

Mr. Abhay Tiwari, Advocate for the appellant.

Mr. N.K. Mehta, Panel Lawyer for the State.

JUDGMENT

(Delivered on 20th December, 2006)

The following judgment of the Court was delivered by **Dhirendra Mishra, J.**

1. Appellant Sukul Singh has preferred this criminal appeal under Section 374(2) of the Code of Criminal Procedure, as he stands convicted under Section 302 of the I.P.C. vide judgment dated 19.11.1998 passed by the Additional Sessions Judge, Korba in Sessions Trial No.3/97 and sentenced to undergo imprisonment for life for causing homicidal death of his wife Balkunwar.

2. Briefly stated, the case of prosecution is that the appellant himself lodged the First Information Report of Ex.P-11 informing the police that on the previous day i.e. on 15.9.1996 at about 7.00 p.m. when he was returning to his home from village side, Hariram & Meghnath

came behind him, therefore, he stopped near the well, at that time Meghnath assaulted him by a club, which struck his left knee, as a result of which he fell down and thereafter, both of them pounced over him. On hearing a shout, Balkunwar, wife of accused came, separated him and thereafter he immediately ran to his house. Thereafter, Meghnath & Hariram both assaulted his wife Balkunwar by club, who fell unconscious. He has further stated that out of fear, he slept in his house and his wife was lying in the courtyard whom he saw at about 10.00 p.m. when he woke up. He found injuries on her hand, head, leg and blood was oozing. She was asking for water whereupon he provided her water. He took her inside the house and advised for treatment, however, she did not go for treatment, as she was feeling giddiness. He alone went to the house of Village Patel Mangal Singh & Anandram, narrated the incident to them, both of them came to his house and stated that they shall be going to lodge the report in the morning. He has further stated that at about 3.00 a.m. he saw that his wife was breathing very slowly, on which he went to call his son & daughter from his father's house and by the time they returned, his wife was already dead.

3. After conducting the investigation police filed the charge sheet against the appellant under Sections 302 & 201 of the I.P.C. as the information given by the appellant in the F.I.R. was not established and on the basis of evidence collected the appellant himself was found responsible for causing death of his wife Balkunwar.

4. Homicidal death of deceased Balkunwar is not in dispute. Even otherwise from perusal of the statement of Dr. B.P. Kanwar (PW-16), who has conducted the postmortem on the dead body of Balkunwar, submitted his report of Ex.P-21 in which he found 14 injuries on the person of the deceased described below and opined that the cause of death was coma due to injuries over the head, multiple injuries over the dead body and the injuries present on the body were sufficient to

cause death in the ordinary course. Accordingly, homicidal death of deceased Balkunwar is established.

1. Lacerated wound in the size of 1"x ½" x bone deep on right chin.
2. Lacerated wound in the size of 1" x ½" x bone deep on left side of frontal region.
3. Lacerated wound in the size of 3"x 1"x ½" on posterior aspect of right forearm.
4. Lacerated wound in the size of 1" x ½"x ½" on the left wrist near it another lacerated wound in the size of ½"x½"x ¼" on medial aspect.
5. Diffused contusion on right elbow.
6. Diffused contusion over right temporal region.
7. Contusion in the size of 4½" x 3½" with abrasion in the size of 2" x ½" over abdomen just above the amlytis.
8. Contusion in the size of 4" x 3" over right iliac crest
9. Contusion in the size of 7"x5" over front of right thigh of middle.
10. Contusion in the size of 3½" x ½" on mid of front of left leg.
11. Abrasion in the size of ½"x ¼" with contusion on route of nose.
12. Contusion in the size of 5" x 3½" over left knee.
13. Multiple contusions in the size of 6" x 2" on back and over renal region.
14. Lacerated wound in the size of 2 ½" x ½" x ½" on the posterior aspect of the middle of left thigh.

5. Learned counsel for the appellant submits that there is no eyewitness to the incident, the conviction is based on the circumstantial evidence, however, the circumstances relied upon by the trial court does not lead to irresistible conclusion that the appellant was responsible for the death of deceased. He further submits that the

facts mentioned in the FIR lodged by the appellant is duly corroborated by the statements of PW-2 Anandram & PW-3 Mangal Singh, who have admitted that the appellant went to their house in the night and informed them that Meghnath & Hariram i.e. PW-4 & PW-5 respectively have assaulted his wife Balkunwar. He further submits that the Investigating Officer on the basis of partisan investigation has implicated the appellant in the above offence deliberately absolving the true offenders. He further submits that the circumstances relied upon by the trial court such as, on the date of incident a neighbour heard the cries of deceased Balkunwar when the deceased and the accused were quarrelling; report lodged by the appellant was found to be false after investigation; and alleged extrajudicial confession of the appellant before Ramsingh (PW-11), who is admittedly the brother of deceased Balkunwar. Extrajudicial confession, on the face of it, is unreliable, as there was no occasion for the appellant to confess the guilt that too before the brother of deceased and the facts of FIR cannot be doubted in view of the statements of PW-2 Anandram, PW-3 Mangal Singh & PW-9 Chamarin Bai, who had also seen the appellant, Meghnath & Hariram before the incident near the well.

6. On the other hand, learned counsel for the State supports the judgment of the trial court.

7. We have heard learned counsel for the parties, perused the record of lower court, documentary and oral evidence adduced by the prosecution as also the impugned judgment.

8. The circumstances relied upon by the trial court are as under:-

   I. First Information Report of Ex.P-11 lodged by the appellant was found false on investigation.

   II. The appellant and the deceased were last seen together while the deceased was alive and at that time they were quarrelling.

III. Blood-stains were found inside the dwelling house of the appellant and the deceased.

IV. Weapon of offence, carpenter axe and other articles recovered from the room of the appellant were found stained with blood.

V. The appellant made extrajudicial confession before Ramsingh (PW-11).

9. So far as circumstance No.1 is concerned, if we go through the FIR lodged by the appellant on the next day of incident, a bare reading of FIR reveals that the same is absolutely improbable and unnatural. It mentions that when Meghnath & Hariram had pounced on him, he shouted and hearing the shout his wife came there, separated him and thereafter he fled to his house. Thereafter, Meghnath & Hariram together assaulted his wife by club as a result of which she fainted their itself and out of fear he slept inside his house. When he woke up at about 10 pm i.e. three hours after the said incident, he found his wife lying in the courtyard in the injured condition. Although he has stated that he is assaulted on his knee by club but there is no medical evidence to substantiate his allegation. Thus, we are of the considered opinion that the trial court has rightly inferred in Para 16 & 18 of impugned judgment that the facts mentioned in the FIR are unreliable.

10. So far as the circumstance No.2 is concerned, PW-1 Teejram has stated that on the fateful night at about 8.00 p.m. he and his wife Baratu Bai were returning to their village from Korkoma, when they reached near the house of Chhotelal Seth where the accused resides, he heard the cries of wife of the accused, she was crying 'save-save'. He also heard Sukul Singh scolding his wife in the name of drinking. After returning to home, they narrated the incident to Tilak and requested to pacify the quarrel between Sukul and his wife. However, Tilak did not go there and in the following day he heard that wife of

Sukul has died. However, he does not know as to how she has died. In the cross-examination he has stated that after hearing Sukul, he inferred that deceased has consumed excessive liquor and he has admitted the suggestion that if a person drinks more, he usually shout. Thus, from the evidence of this witness it is patently clear that at about 8.00 p.m. in the night of incident the accused and the deceased were together in their house, deceased was alive and she was crying "save-save". The statement of this witness also belies the claim of the appellant in the FIR that the incident took place at about 7.00 p.m. and Meghnath & Hariram assaulted the deceased.

11. So far as circumstances No.3 & 4 are concerned, a memo (Ex.P-3) regarding place of incident was prepared before Village Sarpanch Jonram Rathia, Village Patel Mangal Singh, Anandram and Kanshiram, which has been proved by the Investigating Officer. PW-2 Anandram in Para-11 of his statement has stated that the quarter was opened by the Inspector before him and in two places small amount of blood was found, blood was also present in the corners of the doors and other places, though he has stated in Para 12 that possibly the murder was not committed inside the house, as the blood was not present in abundance on the floor & walls. He has also stated that the club stained with blood was seized from the room. He has denied the seizure of broken bangles, however admitted his signatures over the seizure memo Ex.P-4. PW-3 Mangal Singh has admitted his signatures in the Panchnama Ex.P-3. To the suggestion of the defence in the cross-examination, he has admitted that Sukul has called him in the night in his house, he saw Balkunwar writhing in pain and Sukul had provided her water. However, he has denied the suggestion that Balkunwar stated that Meghnath & Hariram assaulted her. He has also admitted that there were some stains inside the house. The Investigating Officer in Para-23 of his statement has stated that the blood stains were found in the house of the appellant, blood stained

clothing, blood stained carpenter axe & club were also found inside the house of the appellant. The articles were sent for chemical examination to Forensic Science Laboratory, who have confirmed the presence of blood over the Dhoti, blood stained soil collected from the spot, peg, carpenter axe and club seized from inside the house of the appellant. Above articles, which have been taken into possession from the place of incident i.e. house of the appellant, is a strong circumstance to suggest that the incident in fact, occurred inside the house of the appellant.

12. So far as circumstance No.5 is concerned, the prosecution has examined PW-11 Ramsingh to establish this circumstance, who is admittedly the brother of deceased Balkunwar. It appears that the alleged extrajudicial confession was made by the appellant inside the police station when the Police Inspector asked this witness to go to his brother-in-law and ask him what mistake he has committed and thereafter on his asking, the appellant made the extrajudicial confession. The evidence adduced by the prosecution in this regard does not inspire confidence of the Court and therefore, we are of the considering opinion that the above circumstance is not established in the instant case.

13. Nevertheless, as already held in the foregoing paragraphs, individual circumstances established by the prosecution establishes the involvement of the appellant in the crime in question. We have already held that the incident has occurred inside the house of the appellant and the appellant with a view to misguide the investigation lodges a false report implicating others as the offenders, which was found to be false on investigation. The prosecution has been able to establish the circumstances, in view of the law laid down by the Hon'ble Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220**, in which the Hon'ble Apex Court held that *"in a case based on circumstantial evidence, the circumstances from which*

the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

14. In the result, we do not find any illegality or infirmity in the judgment of trial court, the appeal of the appellant being devoid of any substance liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge
20.12.06

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-